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In re Application of
KIM
U.S. Application No.: 10/069,677
PCT No.: PCT/KR00/00915
Int. Filing Date: 17 August 2000
Priority Date: 21 August 1999
Attorney Docket No.: 023833-124
For: ABDOMINAL EXERCISER

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This decision is in response to applicant's "Petition For Revival of Application Abandoned Unintentionally Under Rule 1.137(b) filed 27 December 2002 in the United States Patent and Trademark Office (USPTO). Applicant has provided payment of the \$640.00 small entity petition fee.

BACKGROUND

On 17 August 2000, applicant filed international application PCT/KR00/00915, which claimed priority of an earlier application filed 21 August 1999. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 21 February 2002.

On 20 February 2002, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by an executed combined declaration and power of attorney of the inventor and a First preliminary amendment.

On 03 December 2002, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that the present application was abandoned as to the United States for failure to pay the full, U.S. Basic National Fee by 30 months.

On 27 December 2002, applicant filed the present petition to revive accompanied by a check in the amount of \$1160.00 (\$640.00 as payment of the petition fee and \$520.00 as payment of the full, U.S. basic national fee).

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), the proper response was payment of the full U.S. Basic National fee. Applicant has provided this payment with the present petition.

As to Item (2), applicant has included the petition fee of \$640.00 along with the present petition.

With regard to Item (3), applicant's statement that the "Applicant petitions for revival of the application which was unintentionally abandoned under 37 C.F.R. § 1.137(b)" is being interpreted to mean that the entire delay in providing the proper reply from the due date for providing the proper reply until the filing of a grantable petition pursuant to this paragraph was unintentional. If this is an incorrect reading of applicant's statement applicant should contact the Office of PCT Legal Administration immediately. Applicant's statement and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate. Further, a review of the present filing reveals that applicant has previously submitted an executed declaration and power of attorney of the inventor and thus all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

CONCLUSION

For the reasons stated above, applicant's petition to revive under 37 CFR 1.137(b) is GRANTED.

Application No.: 10/069,677

This application is being returned to the United States Designated/Elected Office (US/DO/EO) for processing in accordance with this decision. The 35 U.S.C. 371(c) date is **27 December 2002.**



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